

**COURT OF APPEALS
DECISION
DATED AND FILED**

February 18, 2015

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 2013AP463
STATE OF WISCONSIN**

Cir. Ct. No. 2007CF700

**IN COURT OF APPEALS
DISTRICT III**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BRADLEY S. GALLENTINE,

DEFENDANT-APPELLANT.

APPEAL from an order of the circuit court for Eau Claire County:
MICHAEL A. SCHUMACHER, Judge. *Affirmed.*

Before Hoover, P.J., Hruz and Higginbotham, JJ.

¶1 PER CURIAM. On February 25, 2013, Bradley Gallentine, pro se, filed a notice of appeal purporting to appeal an August 19, 2008 judgment of conviction. Because the notice of appeal was not timely filed to appeal that judgment or numerous postconviction orders, we construed the notice of appeal as an appeal from a November 27, 2012 order denying Gallentine's motion for

reconsideration of an order denying his newly discovered evidence motion. However, because an appeal cannot be taken from an order denying a motion for reconsideration unless the motion presents an issue not raised in the underlying motion, *see Silverton Enters. Inc. v. General Cas. Co.*, 143 Wis. 2d 661, 665, 422 N.W.2d 154 (Ct. App. 1988), we directed the parties to address this court's jurisdiction in their briefs. Gallentine's briefs clarify that he is appealing a December 27, 2012 order of the Wisconsin Supreme Court denying his motion to reconsider its denial of a supervisory writ. This court has no authority to review a decision of the Wisconsin Supreme Court. Our jurisdiction is limited to appeals from judgments and orders of the circuit court. *See* WIS. STAT. § 808.03(1).¹

¶2 To the extent Gallentine appeals the November 27, 2012 order denying his motion for reconsideration, we conclude the circuit court's order should be affirmed because Gallentine's motion was procedurally barred. Following Gallentine's 2008 conviction, he filed a postconviction motion and an appeal under WIS. STAT. RULE 809.30. After this court affirmed his conviction and the supreme court denied his petition for review, Gallentine filed pro se postconviction motions under WIS. STAT. § 974.06 on October 27, 2011 and December 2, 2011. He also filed a motion for reconsideration of the order denying the December 2 motion, and filed a petition for a supervisory writ in this court. He raised the issue of ineffective assistance of trial counsel four times prior to his October 5, 2012 motion in which he alleged newly discovered evidence. After the circuit court denied the October 5 motion because the alleged newly discovered evidence was available at the time of Gallentine's trial, Gallentine filed a motion

¹ All references to the Wisconsin Statutes are to the 2011-12 version.

for reconsideration, arguing ineffective assistance of counsel based on his attorney's failure to present that evidence. That issue is procedurally barred because the motion does not allege, much less establish, sufficient reason for Gallentine's failure to have raised that issue in his previous postconviction proceedings in which he repeatedly alleged ineffective assistance of trial counsel. This is precisely the type of piecemeal presentation of issues that is barred by *State v. Escalona-Naranjo*, 185 Wis. 2d 168, 173, 185, 517 N.W.2d 157 (1994). *Escalona-Naranjo* prohibits relitigation of issues that were raised or could have been in the previous postconviction proceedings.

By the Court.—Order affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)5.

